

# THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT—LEGAL PROTECTION FOR THOSE WHO GO IN HARM'S WAY

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**T**he Shylock, to whom his pound of flesh is dearer than patriotism, is not the only man against whom the soldier must be given relief. Much more numerous are cases where, between the soldier and his creditor, there is an honest difference of opinion as to the proper division of the burden, which the war brings to all in a greater or lesser degree. The letters which have come to the committee . . . show that this is a real menace and can not be left to care for itself. The need for this protection is urgent. It is immediate . . . . These men should know what is to be done for them. It needs no argument that freedom from harassing debts will make them better and more effective, more eager soldiers than if their loyalty and zeal is tempered with the knowledge that their country, which demands the supreme sacrifice from them, grudges a small measure of protection to their families and homes.<sup>1</sup>

A number of American myths pass through generation after generation without dying—one with an endless life span is that there is such a thing as a “free lunch.” Another is that only members of the armed forces endure the hardships and consequences of war. An educated polity knows different. When a nation goes to war, the *nation* goes to war, albeit seldom unanimously.

Congress came to the same conclusion in 1918 when it enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA).<sup>2</sup> John Wigmore, who later penned the celebrated *Wigmore on Evidence*, was a major in the Army Judge Advocate General's (JAG) Corps when he was assigned to draft a congressional bill that would provide a comprehensive set of civil protections for service members in World War I. When war appeared on the horizon again in 1940, Congress reenacted the SSCRA almost verbatim,<sup>3</sup> and it has remained in force, with a number of update amendments.

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This article explores the SSCRA provisions most frequently used by mobilized Reserve Component (RC) personnel (which includes members of the Army Reserve and Army National Guard). The Act's primary purpose is to postpone or suspend some of the civil obligations of military personnel so they can give full attention to their military duties. As the U.S. Supreme Court noted, the SSCRA should be read "with an eye friendly to those who dropped their affairs to answer their country's call."<sup>4</sup> *Le Maistre*, the seminal SSCRA case, has stood for the proposition that where there is ambiguity about the application of SSCRA protection, the servicemember should receive the benefit of the doubt.

### General Terms

The Act applies to any person in military service, on active federal duty with a branch of service, or in an RC ordered to report for military service.<sup>5</sup> Unfortunately, the SSCRA covers members of the National Guard only while they are on federal active duty; state active duty does not qualify.<sup>6</sup>

For active duty military personnel, the date of entry into active duty triggers SSCRA coverage; for inductees, the date military orders to report to a specific location are received. For RC members, the operative date is when orders calling them to active duty are received. Some SSCRA coverage expires upon discharge or release from active duty. Several protections, however, extend for a limited time beyond discharge or release from active duty.<sup>7</sup> Each protection must be examined to determine whether it extends coverage beyond release from active duty, because many provisions have been added over time and may vary.

During Operation Desert Storm, the Department of Justice (DOJ) volunteered to enforce the SSCRA for military members, under 28 U.S.C. section 517, which authorizes the DOJ to represent individuals when such representation is in the interest of the United States. A letter to all U.S. lawyers stated, "The Department of Justice views the protection of the benefits of the Act as a very serious matter particularly in this time of reliance on our reserve forces."<sup>8</sup> The DOJ has zealously represented numerous military members with successful results. Separate from the DOJ's SSCRA enforcement, federal district courts now recognize private causes of action brought against SSCRA violators by injured military members.<sup>9</sup>

### Litigation

Reservists are involved in similar amounts of litigation as their non-military counterparts, especially in the area of domestic relations. Litigators representing military personnel and parties involved in

actions with service members need to consider three important civil protections. The first protection suspends state and federal statutes of limitations with respect to civil and administrative proceedings during the period of a military member's service.<sup>10</sup> This is an automatic protection that requires no showing of "material affect," i.e., that the military member's duty impacts the ability to prosecute or defend the action within a specific period.

A second civil protection addresses stays of proceedings; military members who are either plaintiffs or defendants may request a stay because their military service materially affects their ability to prosecute or defend the action.<sup>11</sup> The stay request may be made at any stage in the proceedings, but is not automatic because the burden is on the military member to provide sufficient information for the judge to decide that military duty prevents the member's appearance. A stay and its duration are discretionary on the judge's part.<sup>12</sup> What is important to note is that a request for a stay by either military members or their lawyers may constitute an appearance. This could prevent reopening a default judgment at a later time if the stay is denied and the member does not appear.

For a stay request, the servicemember's commanding officer should make the request and include a copy of the orders and a date when the member will be available. Open-ended requests such as "when the national emergency is over" or "when demobilized" have resulted in stay denials, because trial courts desire continuances to specific dates. Once granted, additional stays due to prolonged deployments, for example, can be requested and should be accompanied by military orders verifying the extended assignment and duty theater.

The third protection permits reopening a default judgment where the military member did not appear.<sup>13</sup> Section 200(1) requires the plaintiff to file an affidavit showing the defendant is in the military service, before judgment is rendered in any action in any court. Failing to do so renders such judgment voidable if it is entered during the military member's term of service or within 30 days after termination of service. To reopen a default judgment a military member must, in addition to not having appeared, also have a meritorious defense to all or part of the original action. Otherwise, there would be no point to reopening the default action.

As discussed in the stay protection, a letter from a military member or a legal assistance attorney may constitute an appearance and deprive the serviceperson of this protection.<sup>14</sup> In litigation involving an absent reserve defendant, the defendant's lawyer should weigh the advantages and disadvantages of requesting a stay against the opportunity to reopen a default judgment. The facts of each case require different considerations.

## Loan Interest Reduction

Although armed services personnel now are compensated better than in previous decades, many reservists suffer loss of income when called to federal active duty. In fact, expenses may increase for reservists and their families because of duplicate food and personal-maintenance costs. In 1942 Congress sought to ameliorate the loss of income when it realized the SSCRA contained no provision to prevent excessive accumulated interest on military personnel's indebtedness.

Concerned that high interest rates for citizens who borrowed money or obtained credit during the Depression would not be able to meet those obligations on active duty, Congress provided relief. Section 206 provides that interest rates on debts incurred by military members prior to active duty must not exceed 6 percent per year during their period of service.<sup>15</sup> This interest cap does not apply to new indebtedness incurred while on active duty.

Under this protection, a creditor is required to reduce the interest rate to 6 percent unless the creditor makes application to a court for a judgment that the serviceperson's ability to pay at a rate greater than 6 percent per year is not materially affected by reason of such service.

The section is silent on whether military personnel must make application to the creditor for the interest rate reduction, but it seems reasonable that a creditor must have notice of a call-up to active duty. Therefore, the armed services routinely provide such SSCRA interest-rate reduction letters during in-processing of reservists. The request should include a copy of military orders indicating the start and end dates of military service, and the statutory authority under which the personnel have been called up. If the creditor believes the member's military duty does not materially affect the ability to pay the higher contracted rate, the only recourse is for the creditor to seek a court judgment. Absent this recourse, the creditor must apply the reduced rate. The interest above 6 percent cannot be accumulated like a balloon note; it must be forgiven.<sup>16</sup>

## Automobile Leases

Auto leases are a common feature in today's consumer economy. Deployments mean the serious financial obligation goes on—but, frequently, not the ability to use the car. If there is an option-to-purchase clause in the lease agreement, the SSCRA's installment contracts civil protection may apply.<sup>17</sup> Although the SSCRA does not terminate automobile leases, it prohibits self-help repossession of items purchased on an installment contract and provides criminal penalties for violation of this section. The lessor's only legal recourse is to repossess upon obtaining a judgment on the debt. However, a military member may request a stay of a judicial repossession action by showing material

affect of military service.<sup>18</sup> As a practical matter, armed with these civil protections, a lawyer representing the reservist can suggest a settlement in which the member surrenders the vehicle in return for the creditor's waiving all early lease termination penalties.

### **Eviction**

Military members and their families cannot be evicted for nonpayment of rent without a court order, regardless of rental agreement provisions or state landlord-tenant law to the contrary. This section provides criminal sanctions for those who knowingly take part in an eviction or attempted eviction of a military member or family. The only requirement for the protection to apply is that the monthly rent must not exceed \$1,200.<sup>19</sup>

Reservists must make a rapid transition from citizen to soldier, and the impact on family finances, including termination of civilian salary and delays with military pay, can result in cash-flow shortages. Nevertheless, there never seems to be a shortage of "Snidley Whiplashes" who demand that "Nell" pay the rent or be strapped to the railroad track. Congress injected statutory delay and judicial process into the landlord-tenant relationship of military personnel to prevent the reservists from being distracted by family welfare concerns back home.

### **Professional Liability Insurance**

Many reserve health-care professionals were mobilized during Desert Storm, and Congress created new civil protections in the area of professional liability insurance<sup>20</sup> that allow professionals to suspend liability policies while on active duty. The new amendment authorized the Secretary of Defense to designate additional military professionals for coverage under this provision; lawyers became entitled to this protection in 1999.<sup>21</sup>

The protection covers refunds of premiums attributable to active duty time and guarantees reinstatement of insurance upon termination of active duty. It also stays civil or administrative action for damages on the basis of alleged professional negligence or other professional liability for those whose coverage has been suspended under this protection while on active duty. Another amendment requires reinstatement of health-insurance coverage upon release from active service.<sup>22</sup>

### **Powers of Attorney**

There are a number of immutable rules in warfare; one is that some soldiers will become prisoners of war or missing in action. It is standard procedure that reservists during in-processing and preparation for overseas movement execute powers of attorney (POA) that include

expiration dates. The SSCRA converts or extends them into durable POAs when the member is in a missing status.<sup>23</sup> The POA remains in effect, extending indefinitely the termination date while the member remains in a missing status. In some cases this lasts a number of years. Hence, a military member should be exceptionally careful about the person appointed as representative in the POA. All reservists are briefed on the legal characteristics, liabilities, and powers of a special, versus a general, power of attorney during legal assistance briefings required under the SSCRA.

### **Further Relief**

Congress could not possibly foresee all the legal problems a reservist might face, so it also created a general relief protection. This authorizes a military member, at any time during military service or within six months after, to apply to a court for relief of (1) any obligation or liability incurred by the member before active duty, or (2) any tax or assessment that falls due before or during active military service.

This provision empowers the court to grant stays of enforcement, during which no fine or penalty can accrue if military service materially affected the member's ability to comply with the obligation or to pay the tax or assessment.<sup>24</sup> Dependents also receive this protection.<sup>25</sup> In a sense, Congress created a court of equity to protect the legal vulnerability of military members and their families when they are least able to represent their interests, and to preserve a creditor's legitimate property rights.

### **Conclusion**

This brief SSCRA synopsis is not a substitute for a thorough review of the many legal topics addressed here. On the contrary, lawyers representing reservists are encouraged to read more information and review sample letters notifying creditors of SSCRA protections. The U.S. Army Judge Advocate General's Corps website is available at <http://www.jagcnet.army.mil>, and the Department of Defense Reserve Affairs website is at <http://www.defenselink.mil/ra/family/toolkit>.

We conclude where we began with the observation that the society that reservists represent bears the responsibility and cost for sending them off to war. The SSCRA embodies that responsibility and seeks to apportion equitably the economic burden of a nation at war. It is not only those in uniform who must endure the hardship of war. Maj. John Wigmore stated the reservist's case well: "You drop everything you have; drop all your relations and all your business affairs, and all the property you have, and we will take you, and maybe your life.' We say to him, 'Leave your family; leave your affairs, and sacrifice a great deal actually and sacrifice everything potentially.'"<sup>26</sup>

Since 1918 the Republic's response to this sacrifice and need for legal consideration has been the SSCRA. Armed with these civil protections, untold battalions of nonuniformed lawyers within the ABA have given of themselves, their time, and their treasure to protect and zealously represent those who must go in harm's way. We, the armed forces of our nation, are grateful for your helping us to do what must be done for the sake of all.

## Notes

1. House Comm. on Judiciary, Soldiers' & Sailors' Civil Relief Bill, H.R. Rep. No. 181, 65th Cong., 1st Sess. (1917).
2. Soldiers' & Sailors' Civil Relief Act (SSCRA), 50 U.S.C. § 501.
3. SSRCA: *Hearings on H.R. 9029 Before the Committee on Military Affairs of the House of Representatives*, 77th Cong., 2d Sess. (1942).
4. *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).
5. 50 U.S.C. App. § 516.
6. Office of U.S. Army Judge Advocate General, DAJA-AL 1991/1884, June 21, 1991.
7. 50 U.S.C. App. § 516.
8. DOJ, *Requests for Representation Concerning the Soldiers' and Sailors' Civil Relief Act*, March 11, 1991 (unpublished).
9. *See Moll v. Consumer Finance Co.*, 1998, U.S. Dist. LEXIS 3638 (N.D. Ill. 1998) (unpublished); *Cathey v. First Republic Bank*, (W.D. La., 2001) (unpublished).
10. 50 U.S.C. App. § 525. Applies to all S/Lims except internal revenue laws, *see* § 527.
11. *Id.* at § 521.
12. *See Boone v. Lightner*, 319 U.S. 561 (1943).
13. 50 U.S.C. § 520.
14. *See Skates v. Stockton*, 683 P.2d 304 (Ariz. Ct. App. 1984).
15. 50 U.S.C. App. § 526.
16. 88 Cong. Rec. 5366 (1942).
17. 50 U.S.C. App. § 531.
18. *Id.* at § 532.
19. *Id.* at § 530.
20. *Id.* at § 592.
21. Memorandum, Dep't of Defense (Mar. 1999) (unpublished).
22. 50 U.S.C. App. § 593.
23. *Id.* at § 591.
24. *Id.* at § 590.
25. *See Morris Plan Indus. Bank of N.Y. v. Petluck*, 60 N.Y.2d 162 (1946).
26. 1942 Hearings, *supra* note 3, at 97.